

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

BAIL APPLICATION NO.983 OF 2015

Surendrakumar Chamanlal Batra

...Applicant

Versus

The State of Maharashtra

...Respondent

.....

Mr. Harshad Ponda with Jawahar R. Prajapati for the Applicant.

Mr. Shirish Gupte, senior counsel with Ms Anita Agarwal i/b.

Mr. S.P. Thorat for the Intervener/orig. Complainant.

Mr. Arfan Sait, APP for the Respondent -State.

Mr. Darekar, P.I. with Mr. Shinde, API, Kharghar Police
Station, Navi Mumbai, present.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATE : 16th DECEMBER, 2015.

P. C. :

This is an application for bail filed by the aforesaid Applicant (accused No.4), who is facing trial in Sessions Case No.114 of 2015, pending on the file of Sessions Judge, Raigad. The said case arises from C.R. No. I-385 of 2014 registered with Kharghar Police Station, District- Raigad, for offences punishable under sections 302, 397 and 109 r/w 34 of the IPC.

2. Mr. Prajapati, the learned counsel for the Applicant has

submitted that there is no prima facie material to show the involvement of the Applicant in the said crime. He contends that the only circumstance relied upon by the prosecution is the extra judicial confession of the co-accused. Relying upon the judgment of the Hon'ble Apex Court in the case of **Haricharan Kurmi, Jogia Hajam Vs. State of Bihar, AIR (SC)-1964-0-1184**, he contends that the confession of the co-accused is not a substantive piece of evidence and can be pressed into service only when there is other evidence to link the accused with the crime. The learned counsel for the Applicant has also relied upon the judgments of this Court in **Paru Mrugesh Jaikrishna Vs. Asst. Collector of Customs, Preventive Deptt Bombay, Laws (BOM)-1987-6-41 MHLR-1987-0-1138** and **Gopal Govind Chogale Vs. Assistant Collector of Central Excise, Laws (BOM) 1985-2-499** and has submitted that the charge cannot be framed on the basis of mere confession of the co-accused.

3. The learned counsel for the Applicant has submitted that in the instant case apart from the said confession of the co-accused there is absolutely no material on record to link the Applicant with the crime. Referring to the list of the crimes, relied upon, the learned counsel for the Applicant has submitted that the Applicant has already been

acquitted /discharged in the said cases. The learned counsel for the Applicant submits that the Applicant does not have criminal antecedents. The learned counsel for the Applicant contends that there is absolutely no material to prove the involvement of the Applicant in the said crime. Hence, the Applicant is entitled for bail.

4. Mr. Sait, the learned Public Prosecutor has submitted that apart from the confessional statement of the co-accused, there are other circumstances to link the Applicant with the crime. He has submitted that the statement of the husband of the deceased reveals that the Applicant had phoned him the previous day and had tried to find out the whereabouts of the deceased. He has further submitted that the material on record also prima facie proves that the Applicant was aware that the deceased and her husband were looking out for plots. Furthermore, the motor-cycle, which was in custody of the Applicant was used by the other co-accused and the co-accused were seen on the motor-cycle near the place of the incident. He has further submitted that these circumstances when considered along with the confessional statement of the co-accused, prima facie proves that the Applicant is also involved in committing the crime.

5. The learned APP has submitted that the Applicant has a

criminal record. The fact that he has been acquitted in some of the cases is not relevant, as a perusal of the said judgments indicates that the Applicant was acquitted only because the material witnesses could not be traced. He has relied upon the decision of the Hon'ble Apex Court in the case of **Neeru Yadav Vs. State of Uttar Pradesh & Anr, 2015, AIR SCW 5416**. The learned Public Prosecutor has submitted that the offence is of a serious nature. The witnesses are yet to be examined and the possibility of the Applicant interfering with the witnesses cannot be ruled out.

6. Mr. Gupte, the learned counsel for the Intervener has also submitted that at the stage of deciding the bail application, the court is only required to consider the prima facie material to show the involvement of the Applicant in the crime. He has submitted that the material on record, prima facie links the Applicant with the crime. He has submitted that the decisions, relied upon by the learned counsel for the Applicant cannot be considered for deciding the application for bail. He has further submitted that the post mortem report indicates that the deceased was murdered in a most brutal manner and there is sufficient material to prove the role of the Applicant as well as the co-accused in the said crime. He has submitted that there is prima facie

material to indicate that the Applicant and other accused had hatched a criminal conspiracy to commit murder of Meenakshi Jaiswal and that section 120 B of the IPC can be added at any stage.

7. I have perused the records and considered the submissions advanced by the learned counsel for the Applicant, the learned counsel for the Intervener and the learned Public Prosecutor for the Respondent -State. The records prima facie reveal that the deceased was the wife of Dr. Santoshkumar Ramnarayan Jaiswal, Civil Judge, Senior Division, who at the relevant time was posted at Malegaon and was residing at Malegaon. The deceased Meenakshi Jaiswal, Chairperson of State Child Rights Commission, was residing at Kharghar, Navi Mumbai. On 19.12.2014 Dr. Santoshkumar Jaiswal the husband of the deceased had tried calling his wife. The cell phone of his wife was constantly switched off, therefore, he requested his friend Santosh B. Jaiswal to check why his wife Meenakshi was not receiving the calls. Said Santosh B. Jaiswal, visited the apartment of the deceased and found that the door was open and said Meenakshi, wife of Dr. Santoshkumar R. Jaiswal was lying in a pool of blood with several injuries on her body. He reported the matter to the police and thereupon the police visited the place of the incident and recorded the

FIR, pursuant to which, the aforesaid crime came to be registered. The body of the deceased was shifted to the hospital for post mortem. The post mortem report prima facie reveals that there were 13 incised wounds on the body of the deceased. The Doctor has opined that death was due to multiple injuries with haemorrhagic shock.

8. The statement of Mohammad Gafoor prima facie reveals that on 19.12.2014 at about 12.00 p.m. he had seen the co-accused Vinayak, the driver of the deceased and two other persons near the building where the deceased was residing and that the co-accused Vinayak Chavan had told him that he was taking his friends to do the electric and painting work in the flat of Meenakshi. The statement of Suresh Shedpure, the brother of Meenakshi also prima facie reveals that on 19.12.2014 between 15.30 to 15.45 hrs. he had visited the house of his sister Meenakshi. He has stated that the front door of her flat was closed and that the co-accused Vinayak, who was at the door had told him that Meenakshi had gone out and some electrical and painting work was going on in the flat. This witness has further stated that the two other persons had opened the door and the co-accused had introduced him as Suraj and Mani and told him that they were doing the painting and electrical work in the flat. His statement

further indicates that he had seen some red stains on their clothes.

9. The material on record prima facie indicates that the co-accused Vinayak, Suraj and Maninder were present at the place of the incident. The material on record prima facie reveals that some stolen articles and weapon of offence were recovered at the instance of the co-accused.

10. The statement of Jitendra @ Rocky Tarasing Walia reveals that on 20.12.2014 at about 6.44 hours he received a call from Suraj, accused No.3. When he questioned him as to why he has called, said Suraj had told him that on 19.12.2014, he alongwith friends Vinayak Chavan, Maninder Singh and the Applicant herein were at Kharghar and at that time accused No.2 Vinayak Chavan had told them that the deceased had about 3 kilos of gold and cash more than of Rs.25,00,000/-. The accused No.3 Amitkumar @ Suraj had also told him that the Applicant, husband of the deceased and the deceased were looking out for a plot for a hospital and that they must be having lot of money. He has stated that in view of this thereafter they went to the house of the deceased and that he alongwith Vinayak and Manindarsing committed murder of said Meenakshi Jaiswal. He has

further confessed that as informed by the Applicant herein they tried to search for the jewelery and cash in the house but they were unable to find it in the house and as such they had removed gold ornaments and watch, which was on the body of the deceased.

11. The confessional statement prima facie reveals that the Applicant herein had informed the co-accused Surendrakumar that deceased and her husband were looking out for plot for a hospital and that they must be having lot of cash with them.

12. Section 30 of the Indian Evidence Act can be read as under:-

30. Consideration of proved confession affecting person making it and others jointly under trial for same offence. —When more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the Court may take into consideration such confession as against such other person as well as against the person who makes such confession.

13. In the case of **Haricharan Kurmi, Jogia Hajam Vs. State of Bihar**, AIR (SC)-1964-0-1184 the Hon'ble Supreme Court has held

that the confessional statement is not substantive piece of evidence and can only raise serious suspicion, which however, grave cannot take place of proof.

14. In the instant case apart from the said confessional statement, the statement of Dr. Santoshkumar Jaiswal, the husband of the deceased indicates that the Applicant was known to him and his wife and that they had told the Applicant that they were interested in purchasing a plot for the hospital. The Applicant had shown some plots which were not liked by Meenakshi Jaiswal and she was annoyed with the Applicant for showing plots which were not suitable for the hospital. The statement of Dr. S.R. Jaiswal further indicates that the Applicant felt insulted and that the Applicant had told him that the deceased should not have insulted him.

15. The Statement of Dr. Santoshkumar Jaiswal, thus, prima facie indicates that the Applicant was aware that he and his wife were looking out for a plot and therefore had reason to believe that they had lot of money, which was the motive of murder. The statement of the complainant is consistent with the extra judicial confession made by the co-accused.

16. The statement of Dr. Santoshkumar R. Jaiswal further reveals that on 18.12.2014 the Applicant had phoned him and had enquired with him whether he would be coming to Kharghar. Dr. Santoshkumar R. Jaiswal, had informed the Applicant that he would not be visiting Kharghar. The statement of Dr. Santoshkumar R. Jaiswal further reveals that the Applicant had also enquired with him whether the deceased would be at home. He had informed the Applicant that the deceased would be at home. The said statement prima facie reveals that about a day prior to the incident the Applicant had ascertained whether the deceased would be at home and further whether her husband i.e. Dr. Santoshkumar Jaiswal would be visiting the deceased.

17. The statement of Lalit Sukhram Vaidya prima facie reveals that he was in need of money and he had taken loan of Rs.49,000/- from the Applicant and hypothecated his two wheeler bearing No.MH 46-V-9393. The statement of this witness further reveals that the other co-accused who were working for the Applicant used to come to his house for collecting the loan amount. The statement of this witness also reveals that the Applicant had told him that he would return the

motor-cycle only after payment of money. The statement of this witness prima facie reveals that the Applicant herein had taken the said vehicle. The statement of one Raju Thapa, security guard of the same complex wherein the deceased was residing, prima facie reveals that the co-accused, who were working with the Applicant and who are involved in committing the crime had come to the said complex on the said motor-cycle bearing No. MH 46-V-9393.

18. All these facts and circumstances are prima facie sufficient to link the Applicant with the crime. The post mortem report prima facie shows that the deceased was murdered in a most brutal manner. The offence is of grave and serious nature. Furthermore the trial has not commenced and releasing the Applicant on bail at this stage, would hamper the trial.

19. Considering the above facts and circumstances, in my considered view, this is not a fit case for grant of bail. Hence, the application is dismissed.

(ANUJA PRABHUDESSAI, J.)